

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 17.03.2015

CORAM:

THE HONOURABLE MR.JUSTICE M.JAICHANDREN
AND

THE HONOURABLE MRS.JUSTICE ARUNA JAGADEESAN

H.C.P.No.3085 of 2014

Noor Mohamed ..Petitioner/Father of the Detenue

Vs

- 1.The Secretary to Government,
Home, Prohibition & Excise Department,
Secretariat,
Chennai 600009
- 2.The District Magistrate & District Collector,
Coimbatore. ..Respondents

Prayer:- This Habeas Corpus Petition is filed under Article 226 of the Constitution of India to call for the records relating to the detention order passed by the second respondent pertaining to the order made in Cr.M.P.No.34/G/2014/E1 dated 25.08.2014 against the petitioner's son Abdul Jaleel, Son of Noor Mohamed, male, aged 26 years, who is detained at Central Coimbatore and set aside the same and direct the respondents to produce him before this Court and set him at liberty.

For Petitioner : Mr.C.Prakasam

For Respondents : Mr.C.Emalias,
Additional Public Prosecutor .

ORDER

This Habeas Corpus Petition is filed, by the father of the detenu, namely, Abdul Jaleel, S/o Noor Mohamed, aged 26 years, to issue a Writ of Habeas Corpus, to call for the records, in Cr.M.P.No.34/G/2014/E1 dated 25.08.2014, passed by the 2nd Respondent, detaining the detenu, under Section 3(1) of the Tamil Nadu Prevention of Dangerous Activities of Bootleggers, Drug Offenders, Forest Offenders, Goondas, Immoral Traffic Offenders, Sand Offenders, Slum Grabbers and Video Pirates Act, 1982 (Tamil Nadu Act 14/1982), branding him as a "Goonda", in the Central Prison, Coimbatore, to quash the same and to direct the Respondents to produce the body of the detenu and set him at liberty forthwith.

2. Though several grounds have been raised in this Habeas Corpus Petition, Mr.C.Prakasam, the learned counsel appearing for the petitioner, confines his argument only in respect of non-application of mind on the part of the detaining authority in passing the order of detention.

3. According to the learned counsel appearing for the petitioner, in the grounds of detention, the detaining authority has referred to a similar case where bail was granted to the accused by the learned Judicial Magistrate, Avinashi, in C.M.P.No.8752/2011 in respect of Crime No.1035/2011 on the file of Karumathampatti Police Station, Coimbatore District for the offence under sections 394 r/w 397 IPC. But in the said similar case, statutory bail was granted to the accused. The learned counsel further submitted that the said similar case cannot be compared with the ground case, so as to arrive at the subjective satisfaction that the detenu would be granted bail in the ground case. Hence, it is stated that the Detaining Authority has passed the impugned detention order in total non-application of mind and the subjective satisfaction arrived at by the Detaining Authority that there is a real possibility of the detenu coming out on bail in the ground case is a mere ipse dixit without any cogent materials.

4. Per contra, Mr.C.Emalias, the learned Additional Public Prosecutor would submit that the order of detention has been passed on cogent and sufficient materials and the same cannot be interfered with at the instance of the petitioner. Therefore, he submits that the Habeas Corpus Petition does not merit any consideration and the same is liable to be dismissed.

5. We have given our careful and anxious consideration to the rival submissions put forward by the learned counsel on either side and also perused the impugned order of detention and the materials placed on record.

6. A perusal of paragraph No.5 of the grounds of detention, shows that the detaining authority has referred to a similar case where bail was granted to the accused by the learned Judicial Magistrate, Avinashi, in C.M.P.No.8752/2011 in respect of Crime No.1035/2011 on the file of Karumathampatti Police Station, Coimbatore District for the offence under sections 394 r/w 397 IPC. But from the booklet it is seen that in the said similar case, statutory bail was granted to the accused. The said similar case cannot be compared with the ground case, so as to arrive at the subjective satisfaction that the detenu would be granted bail in the ground case. Therefore, the Detaining Authority, in total non-application of mind, has arrived at the subjective satisfaction that there is real possibility of the detenu coming out on bail in the ground case. This non-application of mind on the part of the Detaining Authority vitiates the Detention Order and the said Detention Order cannot be sustained in the eye of law and the same is liable to be set aside.

7. It is a trite law that personal liberty protected under Article 21 is so sacrosanct and so high in the scale of constitutional values that it is the obligation of the detaining

authority to show that the impugned detention meticulously accords with the procedure established by law. Preventive detention is preventive and not punitive. When ordinary law of the land is sufficient to deal with, taking recourse to the preventive detention law is illegal.

8. In the light of the above facts and law, we have no hesitation in quashing the order of detention on the above mentioned ground.

9. In the result, this Habeas Corpus Petition is allowed. The impugned detention order is set aside. The detenu is directed to be released forthwith, unless his presence is required in connection with any other case.

Sd/-

Assistant Registrar

True Copy

Sub Assistant Registrar

To

1. The Secretary to Government,
Home, Prohibition & Excise Department,
Secretariat,
Chennai 600009
2. The District Magistrate & District Collector,
Coimbatore.
3. The Superintendent, Central Prison, Coimbatore.
4. The Joint Secretary to Government,
Public (L&O) Fort St. George, Chennai.
5. The Public Prosecutor,
High Court, Chennai.

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सत्यमेव जयते

HCP.No.3085 of 2014

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